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CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTIONS OF: TORTURE AND DETENTION STATES OF EMERGENCY

Written statement*/ submitted by the Association for World Education, a non-governmental organization on the Roster

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[8 January 2001]

*/ This written statement is issued, unedited, as received from the submitting non-governmental organization(s).

GE. *200*0*0483*

ENG

Egypt's "State of Emergency" Regulations: the case of Dr. Neseem Abdel Malek

1. Twenty years ago after the assassination of President Anwar Sadat, a "state of emergency" was re-introduced by the Government of Egypt. In May 2000 it was extended for a further three years. Under these regulations any civilian may be referred to a military court by a presidential decision if the case falls under the general category: "act of terrorism" (see article 6 of Act N° 52 of 1966).

2. The Association for World Education is highlighting one particular gross miscarriage of justice, in order to illustrate the iniquitous results of a system that, on inadequate, or non-existent evidence, often leads to "arbitrary detention" and to long imprisonment without appeal.

3. Dr. Neseem Abdel Malek is in prison since September 1997 on a 25 year sentence - reduced to 10 years in January 2000. Opinion N° 10/1999 (Egypt) of the Working Group on Arbitrary Detention (20 May 1999), and the reply of the Egyptian Government, are here reprinted without any modification.

4. In view of the deteriorating health of Dr. Neseem Abdel Malek, on 20 November 2000 the Association for World Education made a further "urgent appeal" to the Working Group on Arbitrary Detention. This appeal was transmitted to the Government of Egypt in the usual manner.

OPINION N° 10/1999 (EGYPT), ADOPTED ON 20 MAY 1999
[E/CN.4/2000/4/Add.1, pp. 52-55]

Communication addressed to the Government of Egypt on 2 June 1998.

Concerning: Neseem Abdel Malek.

The State is a Party to the International Covenant on Civil and Political Rights

5. (1) The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights. The mandate of the Working Group was clarified and extended by resolution 1997/50. Acting in accordance with its methods of work, the Working Group forwarded the above-mentioned communication to the Government.

6. (2) The Working Group conveys its appreciation to the Government for having forwarded the requisite information in good time.

7. (3) The Working Group regards deprivation of liberty as arbitrary in the following cases:

(i) When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act) (Category I);

(ii) When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, by articles 12,

18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (Category II);

(iii) When the complete or partial non-observance of the relevant international standards set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned relating to the right to a fair trail is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (Category III).

8. (4) In the light of the allegations made, the Working Group welcomes the cooperation of the Government. The Working Group transmitted the reply of the Government to the source and received its comments. The Working Group believes that it is in a position to render an opinion on the facts and circumstances of the cases, in the context of the allegations made and the response of the Government thereto.

9. (5) In 1993, Dr. Neseem Abdel Malek, formerly the director of the El-Khanka mental hospital in Cairo, issued a certificate of insanity (*) in the case of Saber Farahat Abu Ulla, who had killed four foreign tourists in a Cairo hotel; he was thereafter confined at El-Khanka hospital. In September 1997, Saber Abu Ulla participated in the killing of nine German tourists and their driver in front of the Egyptian Museum in Cairo. He was convicted, sentenced to death and executed in May 1998.

10. (6) According to the source, Dr. Abdel Malek was arrested in connection with the Egyptian Museum massacre. On 13 November 1997, he was sentenced to 25 years in prison by a military court. The court found him guilty of having taken bribes from Saber Abu Ulla, and of having illegally released Saber Abu Ulla from the mental hospital on 15 September 1997 (although he was absent from hospital from 15 to 17 September 1997). According to the source, the sole evidence against Dr. Abdel Malek came from the convicted murderer himself, who had first implicated another doctor who signed his certificate of insanity in 1993, and then retracted that testimony to accuse Dr. Abdel Malek, a Copt. Thus, the doctor who had signed the certificate was duly acquitted, and Dr. Abdel Malek found guilty in his place.

11. (7) It is alleged that the trial against Dr. Abdel Malek suffered from serious deficiencies. Thus, although a civilian, he was tried by a military court. It is submitted that a bribery charge by a certified insane killer who had previously stated that his acts were part of his crusade ("jihad") for God and that he would target "infidels", was totally insufficient evidence to convict a Coptic hospital doctor to 25 years in prison.

12. (8) The source contends that Dr. Abdel Malek was kept in solitary confinement for 15 days after 18 September 1997 before being allowed a visit from his lawyer. His detention was then extended for 30 days. Until the start of the trial, the charges against him were not disclosed and his lawyers had no access to the court files concerning the charges and investigations. Throughout this period of time, Mr. Abdel Malek was kept in incommunicado detention.

13. (9) The military authorities had 45 days, from the day of pronouncement of the sentence to approve or disapprove the military court's verdict. The source submits that a military commander approved the sentence against Mr. Abdel Malek on 1 January 1998, and that his "approval" of the sentence was not made public, so as to avoid public foreign criticism.

14. (10) The above allegations are said to reveal the existence of a serious miscarriage of justice in the case of Mr. Abdel Malek, bearing also in mind that bribery charges frequently carry no more than a 3 year prison sentence.

15. (11) The Government, in its response dated 27 July 1998, states that Neseem Abdel Malek, employed as a director of Al-Khanka Hospital for Mental and Neurological Health, along with others in Military Felony Case N°. 66/97, was accused of having perpetrated offences between 1993 and 1997 by demanding sums of money from Saber Fasahat Abu Ulla, the first accused, as a bribe in return for granting him long furloughs contrary to the law. According to the Government, the first accused testified that he gave Neseem Abdel Malek and other accused money, in return for breaching their work duties by failing to administer his prescribed medication and by granting him long furloughs contrary to the law.

16. (12) The military court, in its judgement on 13 November 1997, relied on the testimonies of the first accused, Saber Farahat Abu Ulla, the fourth, fifth, seventh, eighth and tenth accused to the effect that Dr. Neseem Abdel Malek, the third accused had taken sums of money to enable the first accused to obtain special privileges. The court also relied on the testimony of Sayyid Isa Ibrahim Muhammad and the another brother and sisters of the first accused, Saber Farahat Abu Ulla during investigations conducted by the office of the Attorney General. The court also relied upon a search of the private clinic of Dr. Neseem Abdel Malek.

17 (13) The third, fourth, fifth and seventh accused were also public servants at the time of commission of the offence and admitted that they, along with Dr. Neseem Abdel Malek, had demanded sums of money from Saber Farahat Abu Ulla in return for granting him long furloughs. The eighth accused was at the time the officer in charge of the patients' entrance gate; he had also demanded a bribe from the first accused in return for allowing him out on furloughs of unlimited duration. The tenth accused was the night duty officer who allowed the first accused to leave.

18. (14) The court sentenced Dr. Neseem Abdel-Malek to lifelong penal servitude under Art. 103 and 104 of the Penal Code. The fifth, eighth and the tenth to the thirteenth accused were also sentenced to ten years or more penal servitude.

19. (15) The Government, therefore, contends that the complaint was both factually and legally unsustainable. The Government also observed that the trial hearings were public and that a lawyer representing the third accused appeared throughout.

20. (16) The source in turn contends that the statement of the first accused could not be relied upon, as he had lost "criminal credibility", being a full-time resident of a mental hospital. The source also suggests that Dr. Neseem Abdel Malek was implicated by the first accused because of his hatred for Christians. It refers to the testimony of the mother, who [illegible] to any of the doctors. According to the source, Dr.

(b) That Dr. Neseem Abdel Malek was kept in solitary confinement for 15 days after 18 September 1997 before being allowed a visit from his lawyer.

(c) That until the start of his trial, the charges against him were not disclosed and his lawyers had no access to the court files concerning charges and investigations, and that throughout this period Dr. Neseem Abdel Malek was kept in incommunicado detention.

22. (18) The Working Group, upon consideration of the above facts, finds it difficult to reach any definitive conclusions on the merits of the case. The conflicting nature of the evidence reflected by the allegations of the source and the response of the Government persuade the Group to refrain from entering upon the merits of the testimonies. The Working Group notes, however, that the specific allegations of the source, which have not been responded to by the Government, as indicated above, justify the conclusion that Dr. Neseem Abdel Malek was not accorded a fair trial, contrary to articles 9 and 10 of the Universal Declaration of Human Rights, and articles 9 and 14 of the International Covenant on Civil and Political Rights. The violation is of such gravity as to confer an arbitrary character to his continued detention.

23. (19) In the light of the foregoing, the Working Group renders the following opinion:

> The deprivation of liberty of Dr. Neseem Abdel Malek is arbitrary, as being in contravention of articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights and falls within category III of the applicable categories to the consideration of the cases submitted to the Working Group.

24. (20) Consequent upon the opinion rendered, the Working Group requests the Government: to take the necessary steps to remedy the situation, and bring it in conformity with the standards and principles set forth in the Universal Declaration of Human Rights.

* [AWE's factual clarification: The above-mentioned certificate of insanity was issued in 1993 by Dr. Sayed El-Qut, then the head of another mental institute in Cairo; he later became Deputy Health Minister. Dr. Neseem Abdel-Malek, a doctor at El-Khanka hospital from 1978, became its director in mid-1992 before Saber Faraht Abu Ulla was transferred there.]

REPLY OF THE GOVERNMENT OF EGYPT (E/CN.4/2000/4, § 27.28)

25. (27) The Government of Egypt, in reaction to the Group's Opinion 10/1999 in the case of Neseem Abdel Malik, recalls that the Egyptian legal system provides for the trial of civilians before military tribunals in certain cases. As the case of the above concerned an act of terrorism, the President of the Republic referred it to a military court, under article 6 of Act N° 52 of 1966. The Department of Public (not military) Prosecutions ordered the preventive

by such courts, had to inform the defendant of the charges against him. The Government equally dismisses the allegation that defence counsel was not afforded access to the case file: rather, the case was pleaded by several prominent lawyers and all were provided with a copy of the file. Regarding the allegation that the legally prescribed penalty for bribery does not exceed three years, the Government recalls that article 103 of the Criminal Code prescribes hard labour for life as the penalty for bribery, although the court may exceptionally reduce the penalty to a minimum of three years. The military court considered that the defendant did not merit mitigating circumstances.